

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1092 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and sd/-
MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? yes
 2. To be referred to the Reporter or not? yes
 3. Whether Their Lordships wish to see the fair copy
of the judgement?
 4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

HIMMATBHAI JESINBHAI PARMAR

Versus

UNION OF INDIA

Appearance:

MR GM JOSHI for Petitioner
GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 11/03/99 and 15/03/99

ORAL JUDGEMENT (Per C.K.Thakkar,Actg.C.J.)

This petition is filed by the petitioner in
public interest litigation for an appropriate writ,
direction or order directing the respondent-authorities
to produce necessary records, reports and documents as to

what actions were taken by them relating to the involvement of one Abdul Sattar in pursuance of a complaint, being C.R. I 43/94 registered at Porbandar City (Kamla Baug) 'B' Division Police Station. A prayer is also made to hand over investigation and inquiry to Central Bureau of Investigation (CBI) with time-bound schedule and to submit a report to this Court. An action was also sought against respondents No. 1 and 2 to take disciplinary action against respondent Nos. 6 and 7 forthwith and to suspend them from service.

The case of the petitioner is that he is a practising lawyer of this Court and a vigilant citizen. He is concerned about law and order in the State and also safety and security of citizens. It is asserted by the petitioner that the State authorities have utterly failed to take primary precautionary measures to ensure safety of lives of citizens and though inaction, omission and dereliction of duty were pointed out to the highest constitutional functionaries of the State, they have exhibited total unconcern over the matter and no steps whatsoever were taken against erring officers. According to the petitioner, certain officers ought to have been dealt with by taking appropriate actions in accordance with law.

The petitioner has approached this Court in view of an article published in "Chitralekha" (Gujarati weekly) wherein certain news items were published. The article begins with an incident which took place on 2nd July, 1988. Against increase in tuition fee, some agitation was going on in Sabarmati area and one Police Inspector Mr.K.D. Jadav lost his life. It was stated that a sitting M.L.A. Mr.Yatin Oza was beaten by Police Officer Satish Varma (respondent No.6 herein). At that time, Police Officers Pramod Jha and Atul Karmal (respondent No.7 herein) were present. Judicial inquiry was ordered. The second incident of 10th July 1998 related to an incident said to have taken place in Ahmedabad Circuit House involving Police Officer Pramod Jha. Then there was reference of an incident of November 11, 1998. It was alleged by M.L.A. Yatin Oza that respondents No. 6 and 7 were protecting and shielding one Sattar Maulana, I.S.I. Agent, who was doing anti-social and anti-national activities. A demand was, therefore, made to suspend respondents No. 6 and 7 and to prosecute them. He was said to have stated that if the Government would not take appropriate action, he would fight out against such inaction. A reference was also made to a press conference dated November 6, 1998 by M.L.A. Yatin Oza of Sabarmati wherein certain

allegations were levelled against police officials. The article further states that when police officers were contacted by the journalist, the latter was told that Yatinbhai Oza had some personal grievance against respondent No.6 and with a view to settle the said account, everything was done by him.

The petitioner has mentioned in the petition that having read the article in "Chitralkha", he contacted Mr.Oza, M.L.A. and requested him to provide material whichever was in his possession. According to the petitioner, he obtained a copy of a letter written by Mr.Oza addressed to P.G. Ramrakhiani, the then Principal Secretary to the Government of Gujarat, Home Department dated 1st October, 1998 and another letter addressed to Shri Keshubhai Patel, Hon'ble the Chief Minister, Gujarat State dated October 6, 1998. According to the petitioner, in those two letters, Mr.Oza had given complete facts regarding an incident of smuggling of deadly weapons and arms as also RDX by Sattar Maulana and pointed out dereliction of duty by respondents No. 6 and 7, who were holding key posts in the Police Department. The petitioner also claims to have made detailed inquiry in the matter and according to him, he came to know that some inquiry was directed against respondents No. 6 and 7. According to him, respondent No.6 and 7 have given complete shield and shelter to accused Abdul Sattar, who was indulging in smuggling of deadly weapons, arms and RDX from Pakistan. Abdul Sattar was not arrested, though he was staying in Porbandar within the knowledge of the respondents No. 6 and 7. Hon'ble the Chief Minister, who was a constitutional functionary and the head of the State and even though he was in possession of all material facts, did not discharge his duties properly and there was deliberate omission on his part in discharge of his constitutional obligations. The petitioner, therefore, approached this Court stating in the petition that this is eminently a fit case wherein this Court should take cognizance of the issue involved in the matter and to issue appropriate directions to the authorities.

It was stated by the petitioner that after the petition was filed on February 11, 1999, he addressed a letter on February 16, 1999 through his Advocate to the Hon'ble the Chief Minister, the Principal Chief Secretary and the Principal Secretary (Home) requesting them to inform the petitioner or his advocate about actions taken by them in the subject matter of the petition. The petitioner had also stated that he had sent a copy of the letter written by Mr.Oza. The petitioner received a

reply dated February 20, 1999 stating therein that a complaint made by M.L.A. Mr.Oza about the alleged inaction and harbouring of criminals by some police officers was "being inquired into by the Additional D.G. of Police, CID (Crime)". It was further stated that the inquiry had not yet been completed. As soon as the Government would receive a report from Addl.D.I.G. it would be processed for further action. According to the petitioner, though the inquiry was to be completed within 15 days it is not yet completed. Thus, there is a gross delay on the part of the authorities in the inquiry and the respondents must inform this Hon'ble Court about reasons for delay. According to the petitioner, this Court should issue directions to the respondents to produce relevant record before the Court to enable it to know reasons behind delay in a serious matter concerning security of State.

We have heard Mr.P.M.Raval for Mr.G.M. Joshi, learned Counsel for the petitioner. Mr.Raval submitted that in the facts and circumstances of the case, this Court should exercise extra-ordinary powers under Article 226 of the Constitution by directing the respondents to take immediate action and also by issuing necessary orders to produce records and documents before this Court so as to satisfy the conscience of the Court as to what actions were taken by the authorities, when serious allegations were levelled against responsible police officers.

Our attention, in this connection, was invited by the learned Counnsel to various authorities and standard books on the subject of right to freedom of information and citizens' right to know.

Reliance was placed on following observations by Helen Fenwick in his work "Civil Liberties", at page 191:

"Freedom of information tends to be treated in Civil Liberties texts separately from freedom of expression. This distinction also receives support from the wording of Article 10 of the European Convention which speaks in terms of the freedom to 'receive and impart information', thus appearing to exclude from its provisions the right to demand information; from the unwilling speaker. Moreover, the phraise 'without interference from publis authorities' does not suggest that Government should come under any duty to act in order to ensure that information is received. However, the concept of freedom of

information largely derives its legitimacy from the justifications for free expression and therefore issues which tend to be seen as falling within the ambit of freedom of information may well also be treated as aspects of freedom of expression. Clearly, 'information' is merely one form of speech just as poetry may be termed 'creative speech' or paintings 'artistic speech'. Therefore, freedom of speech may seem on the face of it to be an umbrella term which covers freedom of information." (Emphasis supplied)

It was stated by Hilaire Barnett in "Constitutional and Administrative Law" at pages 265 and 293:

"The several- and continuing - allegations of improper conduct in public life have led to the establishment of a judicial inquiry. The inquiry, chaired by Lord Justice Nolan, reported in May 1995. The Report concludes that there has been no growth in actual corruptions in public life, but that public confidence in politicians has declined sharply in recent years.

In order to redress the balance in favour of openness, the government, in 1993, issued a White Paper Open Government. The White Paper declares that it is the Government's commitment to make government in the United Kingdom more open and accountable. At the same time the government recognizes that it is under a duty to keep some 'secrets' and to protect the privacy of individuals in their dealings with government. The government's approach is stated to be:

- handling information in a way which promotes informed policy making and debate, and efficient service delivery;
- providing timely and accessible information to the citizen to explain the government's policies, actions and decisions; and
- restricting access to information only where there are good reasons for so doing.

On the need for confidentiality, the government recognises that the right of a person to access to information is always a limited right. Areas which require a degree of secrecy include defence

and national security; international relations; law enforcement and legal proceedings; internal opinion, discussion and advice; management of the economy and the collection of taxes; public authorities' commercial and negotiating interests; personal privacy; commercial confidentiality; information given in confidence. Further there is a need to avoid 'unreasonable or voluminous requests' for information and to prevent premature disclosure of information".

Our attention was also invited to a wellknown work of LORD DENNING Master of Rolls in "WHAT NEXT IN THE LAW" at pages 247-248:

"2. The underlying principles

After studying the case it seems to me that the courts are reaching towards these principles. The public has a right of access to information which is of public concern and of which the public ought to know. The newspapers are the agents, so as to speak, of the public to collect that information and to tell the public of it. In support of this right of access, the newspapers should not in general be compelled to disclose their sources of information. Neither by means of discovery before trial. Nor by questions or cross-examination at the trial. Nor by sub-poena. The reason is because, if they were compelled to disclose their sources, they would soon be bereft of information which they ought to have. Their sources would dry up. Wrongdoing would not be disclosed. Charlatans would not be exposed. Unfairness would go unremedied. Misdeeds in the corridors of power in companies or in government departments would never be known. Investigating journalism has proved itself as a valuable adjunct of the freedom of the press. Notably in the Watergate exposure in the United States; and the Poulson exposure in this country. It should not be unduly hampered or restricted by the law. Much of the information gathered by the press has been imparted to the informant in confidence. He is guilty of a breach of confidence in telling it to the press. But this is not a reason why his name should be disclosed. Otherwise much information, that ought to be made public, will never be made known. Likewise with documents. They may infringe copyright. But that is no

reason for compelling their disclosure, if by so doing it would mean disclosing the name of the informant." (Emphasis supplied)

Our attention was also invited to page 252 of the said book where the learned author proceeded to state,

"8 Private Eye

As I go through the proofs, we have a welcome decision. Mr. Jack Lundin, a journalist, got some information about a casino. He did a valuable piece of investigative journalism. He exposed the wrongdoings of the casino. It was published in Private Eye. As a result the casino lost its licence. A police sergeant was prosecuted. The judge ordered the journalist to give the source of his information. He refused. The Attorney General applied to commit the journalist. The Divisional Court acquitted him, because it was not 'necessary' to know the source. The decision was not based on section 10 of the new Act as it was not yet in force. It was based on the common law. I anticipate that in future it will be very rare for a journalist to be ordered to name his source."

In P.P. CRAIG's ADMINISTRATIVE LAW, the learned Author observed at page 523:

"The most prominent reasons for freedom of information legislation are as follows. First, and most fundamental, it is felt that access to information concerning governmental decision-making is central to the idea of a democratic society. Government and its agencies should be accountable for their actions, and this is rendered difficult if they have a "monopoly" over the available information. Secondly, individual citizens should be able to know the information which is held about them in order to check its correctness and the uses to which it is put. Thirdly, public disclosure of information will it is hoped improve agency decision-making because it will be easier to reveal the impact of powerful interest groups upon the agency.

The effectiveness of any such legislation is dependent upon three crucial variables. The first is the range of exceptions contained in the legislation, and the way in which these are

interpreted. All statutes upon freedom of information contain exceptions, but the number and variety thereof vary enormously. For example, the United States' Freedom of Information Act 1966, has nine basic exceptions which include: national security; internal personnel rules; the private business information exception; agency memoranda; and an exception relating to personal privacy."

Emphasis was also placed on Chapter XIII (RIGHT TO INFORMATION) of "Principles of Administrative Law" by M.P. Jain and (Late) S.N. Jain. Observations of Bernard Schwartz (Administrative Law) were also pressed in service. In paragraph 3.17, pp. 129-130, the author has stated:

"3.17 Freedom of Information

"Publicity", said Justice Brandeis "is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the best policeman." Americans firmly believe in health effects of publicity and have a strong antipathy to the inherent secretiveness of government agencies. One manifestation of this is the refusal of the courts to accept extreme claims of executive privilege and allow the government, by its mere fiat, to suppress evidence needed by parties to legal proceedings. The judicial attitude in this respect was strongly reaffirmed in the case of the Watergate tapes, where the claim of the President to an unreviewable privilege to withhold evidence was rejected."

Our attention was also invited to certain decisions by English Courts as well as by the Hon'ble Supreme Court. In R. v. METROPOLITAN POLICE COMMISSIONER, Ex parte BLACKBURN, (1968) 1 All ER 763 (CA), Lord Denning observed that a police constable is independent of executive and he must discharge his duties in accordance with law, without being dictated by superior authority.

In Lord Advocate Scotsman Publications Ltd and others; 1989 (2) All ER 852 (HL), the House of Lords discussed in detail right to get information by a subject.

March 15, 1999.

It may not be necessary for us to enter into larger questions in the instant case. Though we had not issued notice to the respondents, since a letter was addressed by the learned Counsel for the petitioner to (1) Hon'ble the Chief Minister, (2) Principal Chief Secretary and (3) Principal Secretary (Home) on February 16, 1999, a reply was sent to the learned Counsel on February 20, 1999 wherein it was stated that a complaint made by M.L.A. Yatin Oza about alleged inaction and harbouring of criminals by some police officers was being inquired by the Additional Director General of Police, C.I.D. (Crime). The inquiry was not completed and as soon as the Government would receive a report, it would be processed for further necessary action. Mr. Divetia, learned Assistant Government Pleader also produced on record a letter written by Under Secretary, Home Department (Special) dated March 10, 1999 addressed to Mr. Prashant Desai, Government Pleader of this Court. Referring to Special Civil Application No.1092 of 1999 (present petition), it was stated that a letter was addressed by Advocate Mr.Gautam Joshi. A reply was already sent to him. It was also stated that in connection with C.R. No.43/94 registered at Kamla Baug Police Station, Porbandar and for taking necessary actions against the erring officers, investigation has been handed over to Mr. P.C. Pande, Additional Director General of Police, C.I.D. (Crime), Ahmedabad. A copy of that letter was also sent. It was finally stated that necessary instructions were given to Mr.Pande to complete the investigation before March 15, 1999.

In view of the fact that the learned Counsel for the petitioner had written a letter on February 16, 1999 and immediately a reply was sent by the Additional Chief Secretary, Government of Gujarat on February 20, 1999 (i.e. within four days) and that the learned Assistant Government Pleader has produced a letter dated March 10, 1999 in which it was mentioned that necessary instructions were given by the Additional Chief Secretary (Home) to Mr. Pande, Additional Director of Police, C.I.D. (Crime) to complete the investigation by March 15,1999, in our opinion, it cannot be said that there is inaction or negligence on the part of the authorities. We are, therefore, of the opinion that the petition should not be entertained at this stage and accordingly it is rejected. The petition is, therefore, dismissed. No order as to costs.
